

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SZUHSIUNG HO,
also known as ALLEN HO,

Defendant.

Case No.: 3:16-CR-46

VOLUME II (pp. 58-87)

CONTINUED SENTENCING PROCEEDINGS
BEFORE THE HONORABLE THOMAS A. VARLAN

August 31, 2017
9:37 a.m. to 10:17 a.m.

APPEARANCES:

FOR THE PLAINTIFF:

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REPORTED BY:

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1 (Call to Order of the Court)

2 THE COURT: Thank you, everyone, for being here again
3 this morning. Just a moment to get organized.

4 All right. Again, the Court appreciates everybody's
5 input yesterday, particularly the statements and arguments
6 offered by Counsel, both during yesterday's proceeding as well
7 as in the multiple prehearing filings made by the respective
8 parties. The Court also again appreciates the allocution of the
9 defendant, and the Court has considered the entire record in
10 this case, including the letters of support submitted, the
11 presentence report, and again all the arguments presented by the
12 government and the defendant.

13 In a manner intended to comply with the Sixth Circuit's
14 jurisprudence since the Booker case rendered the Sentencing
15 Guidelines advisory and Gall v. United States' requirement that
16 the Court make an individual assessment based on the facts
17 presented and adequately explain the chosen sentence, the Court
18 will explain its reasons for the sentence to be imposed in this
19 case.

20 The Court will discuss the Guideline calculation and
21 the factors discussed in 18 United States Code Section 3553
22 relevant to this case. Based on those factors and consideration
23 of the advisory guideline range, as well as the parties'
24 respective motions, the Court will then impose a sentence
25 sufficient, but not greater than necessary, to comply with the

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1 purposes discussed in 18 United States Code Section 3553.

2 First, with respect to that Guideline calculation, that
3 is contained at Paragraph 54 of the presentence report, based on
4 a total offense level of 25 and criminal history category of I,
5 the Guideline imprisonment range is 57 months to 71 months.
6 Again, of course, that's tempered by the parties' motions, which
7 the court will address momentarily.

8 Looking next, though, at the Section 3553 factors, the
9 nature and circumstances of the offense, the defendant has pled
10 guilty to the lesser included offense of involving a conspiracy
11 to unlawfully engage and participate in the production and
12 development of special nuclear material outside the United
13 States without the intent to injure the United States or to
14 secure an advantage to a foreign nation.

15 His offense conduct, which has, again, been discussed
16 in detail in the writings and more limited extent yesterday, is
17 also set forth in the offense conduct provisions of the
18 presentence report, all of which the Court has reviewed.

19 In brief summation, during the period alleged in the
20 indictment, the defendant was a nuclear engineer who acted as a
21 consultant to the China General Nuclear Power Company, which is
22 based in the People's Republic of China. The defendant was also
23 the owner and president of Energy Technology International, and
24 CGNPC was a state-owned enterprise that specialized in the
25 development and manufacture of nuclear reactors.

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1 As set forth in Paragraph 12, the defendant willfully
2 sought to profit by his own actions and those of ETI by
3 assisting CGNPC in procuring U.S.-based nuclear engineers from
4 the Eastern District of Tennessee and elsewhere to assist CGNPC
5 and its subsidiaries in designing and manufacturing certain
6 components for nuclear reactors more quickly by reducing the
7 time and financial cost of research and development of nuclear
8 technology.

9 And the defendant was aware that this type of
10 assistance required the special authorization of the Secretary
11 of Energy before it could be exported to the People's Republic
12 of China, and he had sought approval from the Department of
13 Energy in the past, and at no time did the defendant obtain
14 specific authorization from the Secretary of Energy for the
15 conduct described in the indictment.

16 Paragraph 13 lists in more detail the assistance that
17 he engaged in terms of paying the various individual or
18 individuals to travel to the People's Republic of China at
19 CGNPC's request to provide nuclear consulting. And it's noted
20 during the trip this individual, at Defendant's direction,
21 provided various Electric Power Research Institute reports to
22 CGNPC, again, as listed specifically in the presentence report.

23 Turning to the history and characteristics of the
24 defendant, the defendant is, I believe, currently 67 years of
25 age. He was born in Taiwan. He has no previous criminal

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1 history. He has two siblings and a mother in Taiwan with whom
2 he maintains good relationships. The defendant was married in
3 1974. He has no children from that union, but he does have a
4 nine-year-old son in China who resides with his biological
5 mother, but with whom the defendant has frequent contact and
6 visits during his trips to China.

7 The defendant became a naturalized citizen of the
8 United States in 1983 and obtained dual citizenship as a
9 Taiwanese citizen in 2011. Physically, it's noted or reported
10 that the defendant has a stent in his heart and suffers from
11 some degree of coronary heart disease. He has no history of
12 mental health treatment or use of alcohol or illegal drugs.

13 The defendant is quite educated with a master's degree
14 in mechanical engineering and a PhD in nuclear engineering. He
15 was self-employed with ETI, his consulting company from 1996 to
16 2016. Prior to that time, he worked for various companies,
17 including Westinghouse, as a senior engineer, working with
18 commercial nuclear power plants and Public Service Electric and
19 Gas, which operated commercial nuclear power plants in New
20 Jersey.

21 With this background in mind, the Court considers the
22 need for the sentence imposed to reflect various factors,
23 including the seriousness of the offense, and, certainly, that
24 particular factor was the subject of much discussion and
25 argument by the parties.

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1 The Court does conclude or agree that Defendant's
2 conduct is serious conduct from the -- from the plea agreement.
3 It's noted again that the defendant willfully sought to profit
4 by assisting CGNPC in procuring U.S.-based nuclear engineers to
5 assist CGNPC and its subsidiaries in designing and manufacturing
6 certain components for nuclear reactors more quickly by reducing
7 the time and financial cost of research and development of
8 nuclear technology, as alleged in the indictment.

9 In more simple terms, the defendant continued with his
10 CGNPC work without obtaining the needed regulatory approval from
11 DOE. He acknowledges this was wrong of him to do and states he
12 accepts full responsibility for his conduct.

13 The Court certainly recognizes, again, the submissions
14 by the parties as to the level of the seriousness of Defendant's
15 offense conduct. Among other things, the defendant states or
16 argues that the reports at issue concern safety practices at
17 nuclear facilities and that the U.S. government has subsequently
18 released one of the reports. In other words, per the defendant,
19 his conduct did not have relation to nuclear weapons programs,
20 but only concerned civilian-run commercial nuclear power plants.

21 The defendant also submits this case involves conduct
22 that DOE routinely approved and that the U.S. government has
23 repeatedly certified China, the People's Republic of China as a
24 responsible nuclear power.

25 And, again, from Defendant's sentencing memorandum,

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1 quoting from that sentencing memorandum, quote, in that context,
2 Defendant's conduct, while clearly wrong, was not particularly
3 serious. The conduct posed no danger to anyone's safety and
4 ETI's work was largely safety related.

5 On the other hand, the government in assessing the
6 seriousness of Defendant's conduct submits and argues that this
7 is not just a licensure offense, but does involve the security
8 and safety of the United States.

9 Looking at the indictment, the defendant pled guilty to
10 conspiring to directly or indirectly engage or participate in
11 the unauthorized development or production of special nuclear
12 materials outside the United States, albeit without the intent
13 to injure the United States or to secure an advantage for a
14 foreign nation.

15 In that regard, the Court does note the distinction
16 between the original indictment, Paragraph 17, which provided
17 the defendant's actions were with the intent to secure an
18 advantage to the People's Republic of China versus the plea
19 agreement, which provides those actions were without the intent
20 to secure an advantage for a foreign nation.

21 That is a distinction, which does in part, at least,
22 impact a discussion of the level of seriousness of Defendant's
23 offense conduct. But even then, as the government argued
24 yesterday, secretiveness equals seriousness.

25 And among other things, the government points to, and

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1 the Court does take into consideration the aspects of
2 defendant's downloading of the restrictive reports, the
3 funneling of foreign payments to American engineers, and other
4 activity on Defendant's part, and all of this against the
5 backdrop of a nuclear energy program that does, as the
6 government noted yesterday, produce a by-product that can be
7 used in the production of nuclear weapons. And that is why, as
8 the government correctly notes, the technology used by American
9 nuclear power plant -- nuclear power plants is significantly
10 regulated, all of which the Court takes into consideration in
11 considering the need for the sentence imposed to reflect the
12 seriousness of defendant's offense conduct.

13 Correspondingly and for many of the same reasons, the
14 Court finds the need for the sentence imposed to promote respect
15 for the law and provide just punishment.

16 Again, while defendant may dispute the level of
17 seriousness, he does not dispute the wrongfulness of his
18 actions, and the Court therefore considers the level and scope
19 of his offense conduct, but also his lack of previous criminal
20 history and his acceptance of responsibility in considering the
21 need to promote respect for the law and provide just punishment.

22 Next, the Court considers the need to afford adequate
23 deterrence, both specific and general. Given defendant's age,
24 his retirement, his acceptance of responsibility, and the impact
25 of his guilty plea, the Court finds a lesser need to afford

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1 specific deterrence, but the Court must also consider the need
2 for general deterrence, that is to fashion a sentence that would
3 act as a general deterrent to others similarly situated who may
4 contemplate the undertaking of similar crimes in the future.
5 Given the nature, scope, and seriousness of Defendant's crime,
6 general deterrence is an appropriate consideration by the Court
7 in this case.

8 With respect to the need to protect the public from
9 further crimes, again, given the defendant's history and
10 characteristics as discussed and his acceptance of
11 responsibility and lack of previous criminal history, the Court
12 finds a lesser need to impose a sentence that would protect the
13 public from further crimes of the defendant.

14 With respect to the need to provide the defendant with
15 training, education, and medical treatment, I think it's obvious
16 the defendant is not in need of training or education.

17 To the extent he's in need of medical treatment to the
18 extent any term of imprisonment is called for in this case, the
19 Court has not been presented with any information that his
20 medical needs could not be addressed by the Bureau of Prisons.

21 With respect to the need to avoid sentence disparities,
22 the Court does note that the advisory Guidelines are intended in
23 part to carry out the national policy, as articulated by
24 Congress, that sentences be uniform across the country to the
25 extent possible and be based on the offender's actual conduct

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1 and history. There are two -- in this case, there are two
2 limitations on this particular precept.

3 One, as emphasized in defendant's sentencing
4 memorandum, Dr. Ho is the first defendant in history to be
5 sentenced for a violation of 42 United States Code Sections
6 2077(b) and 2272. And, second, the parties' respective motions
7 for downward departure and the Court's consideration thereof
8 have an impact on the calculated advisory Guideline range of an
9 offense level of 25 and a criminal history category of I and a
10 starting point advisory Guideline range of 57 to 71 months.

11 One other consideration is, under 3553 is the need to
12 provide restitution. And let the Court go ahead and address the
13 matter of restitution at this point, which was addressed
14 yesterday as an objection to the presentence report by the
15 defendant.

16 With regard to restitution, the Court first notes that
17 the government has not requested that restitution be ordered
18 pursuant to the plea agreement. And in the absence of any
19 argument in favor of awarding restitution under the plea
20 agreement, the Court will decline to do so.

21 The government instead argues the Court should consider
22 its discretion -- should exercise its discretion to order
23 restitution as a special condition of supervised release under
24 18 United States Code Sections 3583(d) and 3563(b)(2). The
25 government requests the Court order \$166,250 in restitution to

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1 the Electric Power Research Institute or EPRI and arrives at
2 this figure by combining the advertised price of two of the
3 three reports the defendant illegally disclosed to an
4 unauthorized recipient. The Court notes the third report at
5 issue in this case has since been released to the public, so
6 this is why its value is not included as part of the requested
7 restitution.

8 In the order of restitution is a condition of
9 supervised release under Section 3583(d) and 3563(b)(2) is
10 discretionary. This means the Court is not required to order
11 restitution under these sections, but the Court may do so under
12 appropriate circumstances.

13 In this case, after full consideration of the parties'
14 legal and factual arguments, the Court will decline to impose a
15 discretionary order of restitution. Discretionary restitution
16 is a tool the Court may use to appropriately compensate victims
17 of a crime for their losses. While the Court agrees with the
18 government that conspiracy cases, such as this one, allow for a
19 broader definition of victim than in other cases, the Court is
20 not sufficiently convinced that EPRI was directly harmed by
21 defendant's criminal conduct in the course of the conspiracy.

22 Defendant aided in the unauthorized production of
23 special nuclear material outside the United States and he used
24 EPRI's reports to do so, but the evidence presented has not
25 convinced the Court that EPRI suffered legal harm, financial or

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1 otherwise, as a result of this conduct. It's not clear to the
2 Court that EPRI would have been able to sell these reports to
3 the China General Nuclear Power Company, the entity to which
4 defendant illegally disclosed the reports; therefore, it's not
5 clear to the Court that EPRI lost income as a result of
6 defendant's disclosure of the report.

7 To the extent it's argued that EPRI may have been able
8 to sell these reports to CGNPC in the future, the Court
9 similarly declines to award restitution for hypothetical future
10 lost income under these circumstances. The evidence presented
11 at sentencing has not sufficiently convinced the Court that EPRI
12 has ever been able to sell the reports in question to CGNPC or
13 that EPRI would ever be able to sell reports in question to
14 CGNPC.

15 Furthermore, based on the arguments and submissions at
16 sentencing, the Court is not in a position to determine the
17 extent of any losses EPRI may have suffered or could suffer in
18 the future as a result of defendant's conduct. There was
19 conflicting argument regarding whether CGNPC was a member of
20 EPRI. Additionally, it's not clear to the Court whether
21 membership in EPRI entitled CGNPC to the reports in question,
22 and whether any such entitlement to the reports would be
23 included in the cost of membership or if CGNPC would still have
24 needed to pay for the reports.

25 Finally, the Court heard no evidence regarding the cost

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1 of the reports at a time when EPRI could have sold them to
2 CGNPC, whether that be in the past, present, or future. The
3 Court also again notes that one of the reports at issue is now
4 available to the public for free, and this signals in part to
5 the Court that the value of these types of reports fluctuates
6 over time, which reinforces the Court's conclusion that it is
7 unable to determine whether EPRI suffered a loss, let alone the
8 amount of any such loss.

9 In the absence of evidence sufficient to convince the
10 Court that EPRI suffered financial harm as a result of
11 Defendant's conduct or more particularly the specific amount of
12 any such harm, the Court finds it's appropriate to decline to
13 exercise its discretion to impose restitution as a condition of
14 supervised release. So to that extent, the Court will grant
15 defendant's objection to the presentence report related to the
16 restitution amount set forth in the presentence report.

17 Turning now to the parties' respective motions, the
18 Court will first address the government's sealed motion for
19 downward departure pursuant to Section 5K1.1 of the Guidelines.
20 Section 5K1.1 instructs the Court to consider several factors in
21 determining an appropriate reduction. These factors include,
22 but are not limited to the Court's evaluation of the
23 significance and usefulness of the defendant's assistance,
24 taking into -- taking into consideration the government's
25 evaluation of the assistance rendered.

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1 Having considered this factor, as well as all the
2 factors of Section 5K1.1, as well as all the other evidence
3 before the Court, the government finds the defendant was -- the
4 defendant's assistance was timely, significant, and useful to
5 the government, and that the information he provided was also
6 truthful, complete, and reliable. Among other things, the
7 government, again, as noted in yesterday's discussion, points to
8 defendant's multiple debriefings, describes his assistance to
9 the United States as extremely valuable and further describes it
10 as -- I believe I'm quoting directly from yesterday's argument
11 by the government -- as crucial to our country's national
12 security.

13 Accordingly, given this description of the defendant's
14 substantial assistance, the government's sealed motion for
15 downward departure is granted. And the Court will take the
16 defendant's cooperation and substantial assistance into
17 consideration in fashioning a sentence sufficient, but not
18 greater than necessary, to comply with the purposes of 18 U.S.C.
19 Section 3553.

20 In that regard, the government has recommended a
21 five-level departure from the current offense level of 25, which
22 correlates to a Guidelines range of 57 to 71 months
23 imprisonment. The Court finds that a five-level departure is an
24 appropriate reduction, considering the factors set forth in
25 Section 5K1.1 as related to Defendant's substantial assistance.

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1 This departure results in a new offense level of 20, with a
2 criminal history category of I and a resulting Guidelines range
3 of 33 to 41 months imprisonment.

4 Next, addressing the defendant's motion for an
5 additional downward departure and/or variance. At the outset,
6 the Court finds it appropriate to distinguish a departure from a
7 variance as the defendant's motion makes a request for both. A
8 departure refers to the imposition of a sentence outside the
9 Guidelines range due to the application of a particular
10 Guidelines provision, whereas a variance refers to the selection
11 of a sentence outside the Guidelines range, based upon the
12 Court's weighing of one or more of the sentencing factors of
13 Section 3553(a). The Court recognizes its discretion to depart
14 or vary as it deems appropriate. The Court also notes that
15 certain Guidelines provisions can aid the Court in determining
16 whether to vary from the Guidelines range.

17 Looking first at Defendant's variance request, the
18 defendant points to several Section 3553 factors in support.
19 Most notably he points to the following factors: That he has no
20 criminal history, so he argues there's little need to protect
21 the public from any future crimes; that the defendant's career
22 in nuclear consulting is over, so he will not be tempted to
23 commit this type of crime again; that a below Guidelines
24 sentence will adequately reflect the seriousness of the offense,
25 as defendant is accused of conduct that DOE routinely approves

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1 and has approved in the past, and that his crime was acting
2 without such prior approval; that he is 67 years old and suffers
3 from a serious heart condition, and that the combination of
4 these factors make incarceration especially difficult for the
5 defendant; that the defendant has already suffered severe
6 punishment, as he has been particularly vulnerable due to his
7 ethnicity, age, and misunderstanding of the severity of the
8 offense, and that the defendant has spent the majority of his
9 presentence incarceration in solitary confinement.

10 In the government's written response, it addressed
11 primarily the defendant's argument regarding the conditions of
12 his presentence confinement, arguing the defendant was confined
13 in a lawful and humane way and that he suffered no injuries
14 while incarcerated. The defendant, on the other hand, submits
15 that while lawful, Defendant's incarceration caused significant
16 physical hardship and psychological impact.

17 The Court recognizes that presentence confinement
18 conditions may in appropriate cases be a permissible basis for a
19 departure or variance, but under the circumstances and review of
20 this case does not believe that Defendant's presentence
21 confinement warrants a variance.

22 Similarly, while the Court has discussed and does
23 consider all the other factors cited by the defendant for a
24 variance, including his age, physical condition, and for the
25 need for the sentence imposed to reflect various factors,

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1 including but not limited to the seriousness of his offense
2 conduct, the Court does not believe that they give rise
3 individually or collectively to a variance.

4 However, as the Court notes, it has and will consider
5 all the factors discussed by the defendant in considering a
6 sentence sufficient, but not greater than necessary, to reflect
7 all the factors of 18 U.S.C. Section 3553.

8 That then brings us to next, to Defendant's motion for
9 downward departure. In that regard, the defendant argues for a
10 downward departure because his conduct falls outside the
11 heartland of the conduct contemplated by Sentencing Guideline,
12 Section 2M6.1, the section under which he faces sentencing.

13 When the Court is presented with an atypical case, one
14 to which a particular Guideline linguistically applies, but
15 where the conduct in question significantly differs from the
16 norm, a departure below the Guidelines may be warranted.

17 In this case, after consideration of the parties'
18 written and oral arguments and the Court's own review of the
19 applicable Guidelines provision and the relevant law, the Court
20 finds this to be such a case, that is, that this is in fact an
21 atypical case. In other words, while Section 2M6.1
22 linguistically covers Dr. Ho's conduct, the Court does find that
23 his conduct falls outside the heartland of Section 2M6.1 cases.

24 Let me explain further. Title Section 2M6.1 covers
25 offenses involving various dangerous weapons, such as nuclear

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1 and chemical weapons, biological agents or toxins or other
2 weapons of mass destruction.

3 Under Section 2M6.1(a)(2), Defendant's base offense
4 level is 28. That same section in Subsection (a)(4) provides
5 for a base offense level of 20, a lower offense level than
6 Defendant's in cases involving a threat to use a nuclear weapon,
7 a chemical weapon, biological toxins, or any other weapon of
8 mass destruction.

9 While the Court agrees with the government, the
10 defendant has committed a serious offense, the Court finds the
11 defendant's conduct is not as serious as those offenses
12 specified in Section (a)(4), and, thus, the language of
13 Section 2M6.1 itself suggests this case falls outside the
14 heartland of the conduct contemplated by that section.

15 The Court has consulted the Sentencing Guidelines
16 beyond Section 2M6.1, as well, and finds them instructive in
17 this case. As noted here and discussed yesterday, Section 2M6.2
18 provides for a base offense level of six. In cases involving
19 violations of the regulations or license conditions of the
20 Nuclear -- Nuclear Regulatory Commission and Department of
21 Energy where such conduct was not committed with the intent to
22 injure the United States.

23 While the parties agree that Section 2M6.1(a)(2) covers
24 Defendant's conduct, the Court finds it instructive the
25 defendant's conduct is similar, at least in certain respects, to

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1 the conduct described in Section 2M6.2. And the Court notes in
2 that regard, as argued by the defendant yesterday, that the base
3 offense level of six under Section 2M6.2 is 22 levels below
4 Defendant's base offense level of 28 under Section 2M6.1.

5 And, finally, the Court finds other cases where
6 defendants face sentencing under Section 2M6.1 to be
7 instructive. Past cases reviewed by the Court involve conduct
8 such as dispersing a chemical weapon at a hospital, possessing
9 ricin for use as a weapon, attempting to acquire nerve gas,
10 mustard gas or a, quote, dirty bomb, closed quote, and plotting
11 to fire missiles at U.S. military assets in order to aid a
12 terrorist group.

13 While these offenses may not themselves make up the
14 heartland of cases under Section 2M6.1, these offenses do
15 contrast, again, in part to Defendant's conduct. The Court
16 reiterates, for all the reasons previously discussed, the
17 defendant's offense is serious, but even serious offenses may
18 fall outside the heartland of cases contemplated by the
19 Guidelines, such that a downward departure is appropriate. And
20 that is what the Court concludes here, for all the reasons
21 discussed, and the Court will therefore grant Defendant's motion
22 for downward departure.

23 Having done so and before that leads us to the sentence
24 in this case, the Court does note pursuant to the plea
25 agreement, the government agreed to dismiss Count 2 of the

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1 indictment in consideration of the defendant's guilty plea. The
2 Court deferred acceptance of the plea agreement until having had
3 the opportunity to consider the presentence report in this case.
4 And after considering the presentence report, the plea agreement
5 will be accepted. And pursuant to the agreement, Count 2 will
6 be dismissed as to this defendant, and the dismissal of this
7 count will be reflected in the judgment.

8 The Court finds the remaining charge adequately
9 reflects the seriousness of the actual offense behavior and that
10 accepting the agreement will not undermine the statutory
11 purposes of sentencing or the Sentencing Guidelines.

12 In light of everything discussed, including the
13 advisory Guideline range and the relevant Section 3553 factors,
14 the parties -- again, the parties' respective motions and the
15 Court's consideration of the facts discussed therein, and
16 considering all the arguments presented, the Court is going to
17 impose a below Guideline range in this case of 24 months.

18 For all the reasons discussed, the Court finds this
19 sentence to be sufficient, but not greater than necessary, to
20 comply with the purposes of 18 U.S.C. Section 3553. The Court
21 also notes that at 24 months, that actually does equate to a
22 offense level of 17, which is below both the starting point in
23 this case as well as the level 20 as recommended by the
24 government. In fact, in recognition of the Court's grant of the
25 defendant's motion for downward departure, the Court notes that,

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1 in effect, the Court has reduced the Guideline sentence by an
2 additional three levels.

3 And, again, the Court in doing so recognizes that this
4 case is outlined outside the heartland of cases as contemplated
5 by the applicable Guideline provision, but the Court also is
6 cognizant, particularly of the seriousness of the defendant's
7 offense conduct.

8 Again, as the Court noted earlier, even if the
9 defendant's actions ultimately in his plea agreement were found
10 to be without the intent to injure the United States or secure
11 an advantage of a foreign nation, the fact remains that the
12 defendant did undertake significant actions, again, including
13 but not limited to the unlawful downloading of restrictive
14 reports and the funneling of foreign payments to American
15 engineers, again, against the background of a nuclear energy
16 program that does provide a by-product that can be used in the
17 production of nuclear weapons.

18 The Court also notes that, obviously, the defendant
19 will receive credit for the time he's already been incarcerated.
20 And the Court is mindful -- or the Court notes in that regard,
21 that it is possible after some period of imprisonment, that the
22 defendant would be considered for a halfway house placement.
23 And given all the consideration of 3553 factors as well as the
24 defendant's history and characteristics, the Court is going to
25 further recommend to the BOP in lieu of any halfway house

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1 placement as a period of imprisonment, as a portion of his
2 sentence, the defendant be evaluated for the BOP's direct home
3 confinement program.

4 The Court also has before it consideration of a fine in
5 this case. The Court does find a fine appropriate -- to be
6 appropriate in this case, again, due to the seriousness of the
7 defendant's offense, the defendant's ability to pay a fine, and
8 the Court's decision not to impose restitution.

9 In determining the value of the fine, the Court looks
10 to the Sentencing Guidelines. The Court does note, take into
11 consideration the argument yesterday, as noted in the plea
12 agreement, that the government agreed to recommend the sentence
13 at the low end of the Guideline range prior to any other
14 consideration by the Court.

15 And the Court does note that, at least from an original
16 Guideline standpoint, the low end of the Guideline range was
17 20,000. And looking at the Guidelines range, after accounting
18 for the downward departure -- departure for substantial
19 assistance, the low end of the Guideline range would be 15,000.
20 But there is a significant range going upward in that regard.

21 And after consideration, the Court finds -- after
22 finding the Guidelines range to be appropriate in this case and
23 considering the parties' plea agreement, but also the Court's
24 discretion in that regard is going to impose a sentence in this
25 case at what was the -- well, excuse me, is going to impose a

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1 sentence -- a fine in this case within the Guidelines range of
2 \$25,000.

3 The Court is also going to impose a one-year term of
4 supervised release, which, consistent with the parties' plea
5 agreement, is at the low end of the supervised release range.
6 The Court also notes the special conditions in Paragraphs 59 to
7 62 of the presentence report related to financial information,
8 credit restrictions, and payment of financial penalties. Those
9 were initially suggested or imposed, recommended for imposition,
10 because of the recommendation of restitution, but because of the
11 imposition of a fine in this case, the Court believes those
12 special conditions to be equally applicable and more
13 particularly -- particularly to be reasonably related to the
14 several sentencing factors discussed by the Court to involve no
15 greater deprivation of liberty than reasonably necessary for
16 those several sentencing purposes and to be consistent with
17 pertinent policy statements issued by the Sentencing Commission.

18 Accordingly and pursuant to the Sentencing Reform Act
19 of 1984 -- let me back up. I misread one notation on the fine.

20 The low end Guideline fine is 20,000, I may have said.
21 That's the amount of fine that I meant to impose, consistent
22 with the parties' plea agreement. So a \$20,000 fine, which is
23 the low end of the original Guideline range.

24 Accordingly and pursuant to the Sentencing Reform Act
25 of 1984, it is the judgment of the Court as to a lesser included

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1 offense of Count 1 in the indictment, that the defendant
2 Szuhsiung Ho is hereby committed to the custody of the Bureau of
3 Prisons for a term of imprisonment of 24 months.

4 Upon release from imprisonment, you shall be placed on
5 supervised release for a term of one year. Within 72 hours of
6 release from the custody of the Bureau of Prisons, you shall
7 report in person to the probation office in the district to
8 which you are released.

9 While on supervised release, you shall not commit
10 another federal, state, or local crime, comply with the standard
11 conditions adopted by this Court in Local Rule 83.10, and not
12 illegally possess a controlled substance. You shall not possess
13 a firearm, ammunition, destructive device, or other dangerous
14 weapon.

15 You shall cooperate in the collection of DNA as
16 directed by the probation officer, and you shall comply with a
17 special conditions of: One, providing probation officer with
18 access to requested financial information; two, you shall not
19 incur new credit charges on existing accounts or apply for
20 additional lines of credit without permission of the probation
21 officer until the fine has been paid in full. In addition, you
22 shall not enter into any contractual agreements obligating funds
23 without permission of the probation officer. And, three, you
24 shall pay any financial penalty imposed by this judgment. Any
25 amount that remains unpaid at the commencement of the term of

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1 supervised release shall be paid on a monthly basis in an amount
2 of at least ten percent of your net monthly income.

3 Title 18 U.S.C. Section 3565(b) and 3583(g) require
4 mandatory revocation of supervised release for possession of a
5 controlled substance, ammunition, or firearm, or for refusal to
6 comply with drug testing. The mandatory drug testing condition
7 in this case, however, will be suspended based on the Court's
8 determination the defendant poses a low risk of future substance
9 abuse.

10 Pursuant to Title 18 U.S.C. Section 3013, you shall pay
11 a special assessment fee in the amount of \$100, which shall be
12 due immediately. And, again, the Court will impose the fine as
13 previously stated.

14 The plea agreement is accepted, and Count 2 is
15 dismissed.

16 Pursuant to Rule 32 of the Federal Rules of Criminal
17 Procedure, the Court advises you may have the right to appeal
18 the sentence imposed in this case. A notice of appeal must be
19 filed within 14 days of entry of judgment. If you request and
20 so desire, the clerk of the court can prepare and file the
21 notice of appeal for you.

22 It's further ordered, absent any objection, you remain
23 on bond pending designation by the Bureau of Prisons.

24 Mr. Atchley, does the government have any objection to
25 the sentence just pronounced that has not previously been

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1 raised?

2 MR. ATCHLEY: None that have not previously been
3 raised, Your Honor.

4 THE COURT: All right. Thank you.

5 Mr. Zeidenberg, does the defendant have any objection
6 to the sentence just pronounced that has not previously been
7 raised?

8 MR. ZEIDENBERG: No, Your Honor.

9 THE COURT: Anything further on defendant's behalf?
10 Mr. Davies?

11 MR. DAVIES: We have a designation request, Your Honor.

12 THE COURT: Uh-huh.

13 MR. DAVIES: And in this case, in addition to what the
14 Court has already stated about recommending that Dr. Ho be
15 considered for direct home confinement at the appropriate time,
16 I think in the event that he is sentenced to a federal facility,
17 in consulting with his family, we would request that the Court
18 recommend designation to the -- and I'm going to botch this
19 pronunciation, but it's Schuylkill Federal Prison Camp in
20 Minersville, Pennsylvania, based on proximity to his family.

21 And in light of the unusual nature of the original
22 charge, we would ask -- also ask the Court to state that it
23 bases its recommendation on a finding, that's agreed to by the
24 parties, that the offense of conviction is not one of espionage,
25 treason, sabotage, or related offenses, as those matters are

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1 defined in the BOP Guidelines, because we want to make sure
2 there's not an incorrect security classification.

3 And I've drafted our request to the Court, if I could
4 proffer that at this time.

5 THE COURT: Has Mr. Atchley seen it?

6 MR. ATCHLEY: I have, Your Honor.

7 THE COURT: You don't have any objections?

8 MR. ATCHLEY: No, sir.

9 MR. DAVIES: He asked for one correction, so you'll see
10 a handwritten --

11 THE COURT: Okay.

12 MR. ATCHLEY: Basically, I think he's concerned about
13 going to maximum security. And we don't think maximum security
14 would be appropriate for him.

15 MR. DAVIES: May I approach?

16 THE COURT: All right. Absent objection from the
17 government, then the Court will include, Ms. Norwood has that
18 language, will include the language jointly submitted by the
19 parties as well as the designation recommendation.

20 MR. DAVIES: Thank you, Your Honor.

21 THE COURT: Anything further on defendant's behalf?

22 MR. DAVIES: No, Your Honor.

23 THE COURT: Anything further from the government?

24 MR. ATCHLEY: No, sir.

25 THE COURT: Thank you, everyone, for your participation

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1 and attendance, and we'll stand adjourned or in recess.

2 THE COURTROOM DEPUTY: All rise. This honorable court
3 shall stand adjourned.

4 (Proceedings adjourned at 10:17 a.m.)
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UNITED STATES DISTRICT COURT

CERTIFICATE OF REPORTER

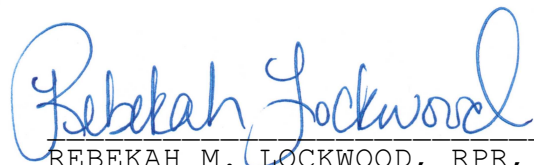
STATE OF TENNESSEE

COUNTY OF KNOX

I, Rebekah M. Lockwood, RPR, CRR, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings; and that the foregoing pages constitute a true and complete computer-aided transcription of my original stenographic notes to the best of my knowledge, skill, and ability.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand at Knoxville, Knox County, Tennessee this 16th day of October, 2017.



REBEKAH M. LOCKWOOD, RPR, CRR
Official Court Reporter
United States District Court
Eastern District of Tennessee